

AMENDED IN ASSEMBLY AUGUST 19, 2002

AMENDED IN ASSEMBLY JULY 16, 2001

AMENDED IN ASSEMBLY JUNE 27, 2001

AMENDED IN ASSEMBLY JUNE 13, 2001

AMENDED IN ASSEMBLY JUNE 5, 2001

AMENDED IN SENATE APRIL 17, 2001

AMENDED IN SENATE MARCH 29, 2001

AMENDED IN SENATE MARCH 28, 2001

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**SENATE BILL**

**No. 234**

**Introduced by Senator Kuehl**

February 14, 2001

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An act to amend Sections 730, 731, and 737 of, to add Sections 737.5 and 737.7 to, and to repeal Sections 731.1, 733, ~~735~~, 736, 738, and 739 of, the Public Resources Code, relating to forest management.

LEGISLATIVE COUNSEL'S DIGEST

SB 234, as amended, Kuehl. State Board of Forestry and Fire Protection: watershed protection.

~~(1) Existing~~

*Existing* law establishes the State Board of Forestry and Fire Protection and provides for its membership and the qualifications of its members.

This bill would replace the existing board according to a prescribed schedule, and would establish additional qualifications for individual

members of the board. The bill also would require the members appointed pursuant to the bill to serve staggered terms, as specified. The bill would apply certain conflict-of-interest provisions to members of the board, and would regulate ex parte communications regarding adjudicative matters of members of the board.

~~Existing law specifies that each member of the board is required to receive compensation for each day during which the member is engaged in the performance of official duties, except that the total number of days for which a member, other than the chairperson, may be compensated cannot exceed 80 days in any one fiscal year. Existing law authorizes the chairperson to receive compensation for not more than 100 days in any one fiscal year.~~

~~This bill would repeal that provision and, instead, would specify that each member of the board will receive \$100 for each day during which the member is engaged in the performance of official duties. The bill would limit the compensation of each member to \$4,000, and the compensation of the chairperson to \$5,000, in any one fiscal year.~~

The bill would make other technical and conforming changes.

~~(2) Under existing law, the board is authorized to adopt regulations to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries.~~

~~Existing regulations, until December 31, 2001, govern watershed protection. These regulations do all of the following: (1) define terms related to watersheds, including watersheds with threatened or impaired values, (2) govern the consideration of feasibility alternatives in timber harvest plans, (3) specify special considerations requiring disapproval of plans, (4) provide standards for the planning, construction, maintenance, and removal of watercourse crossing facilities on tractor roads, (5) declare intent relating to watercourse and lake protection from potentially significant adverse site-specific and cumulative impacts associated with timber operations, (6) specify the protective measures required relating to the beneficial uses of water and riparian functions, (7) enumerate requirements applicable to any planning watershed with threatened or impaired values, (8) authorize the Director of Forestry and Fire Protection to require a postharvest evaluation of the effectiveness of mitigation and practices within a Watercourse and Lake Protection Zone, (9) govern water quality in watersheds listed pursuant to the federal Clean Water Act, (10) specify standards for the planning, construction, reconstruction, maintenance,~~



~~and removal of watercourse crossing drainage structures on logging roads, and (11) require specific measures for roads and landings in watersheds with threatened or impaired values.~~

~~This bill would extend the effective and operative date of the regulations until January 1, 2003. The bill would prohibit the board from adding to, amending, or repealing those regulations, unless it is necessary in order to be consistent with any statutory changes enacted by the Legislature during that time period.~~

~~These provisions would become operative January 1, 2004.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 730 of the Public Resources Code is  
2 amended to read:

3 730. (a) There is in the department a State Board of Forestry  
4 and Fire Protection consisting of nine members appointed by the  
5 Governor, subject to confirmation by the Senate. It is the intent of  
6 the Legislature that the Governor, in appointing, and the Senate,  
7 in confirming, shall provide balanced representation on the board  
8 among industry, environmental, and public interests. In addition  
9 to possessing the general qualifications specified in Section 731,  
10 individual members shall possess the following qualifications:

11 (1) One member shall be a registered professional forester who  
12 has training and experience in silvicultural sciences, forestry  
13 ecology, or forest management, or a closely related field.

14 (2) One member shall ~~have training and experience in~~ *be a*  
15 *representative of, and be engaged in,* timber harvesting and  
16 processing, timber products, and timber marketing, or a closely  
17 related field.

18 ~~(3) One member shall be a timberland owner who engages in~~  
19 ~~commercial forestry or a rangeland owner.~~

20 ~~(4) Two members shall be selected from the general public.~~

21 ~~(5) One member shall be selected from the general public who~~  
22 ~~is employed in the sport or commercial fishing industry.~~

23 ~~(6)–~~

24 (3) *One member shall be a rangeland owner or a timberland*  
25 *owner engaged in commercial forestry who may be a nonindustrial*  
26 *tree farmer as defined in subdivision (b) of Section 4593.2.*

1 (4) One member shall represent the sport or commercial fishing  
2 industry.

3 (5) One member shall be selected from a statewide  
4 environmental organization with experience in forestry policy.

5 (6) One member shall have expertise in forestry policy and  
6 shall be a member of a firefighters labor organization within the  
7 department.

8 (7) One member shall have expertise and experience in  
9 hydrology, water quality, or watershed management, or a closely  
10 related field.

11 ~~(7)~~

12 (8) One member shall have expertise and experience in fishery  
13 and wildlife resources management or wildlife biology or a closely  
14 related field associated with forested lands.

15 ~~(8)~~

16 (9) One member shall have expertise and experience in  
17 ~~landscape architecture, botany, horticulture, botany~~ or native  
18 wood or plant propagation ~~and establishment~~, or a closely related  
19 field, ~~including, but not limited to, professional arborists or~~  
20 ~~horticulturists.~~

21 ~~(b) The three members~~ Each member selected pursuant to  
22 paragraphs ~~(6), (7), and (8)~~ (7), (8), and (9) of subdivision (a) shall  
23 ~~currently serve or have previously served as an elected or~~  
24 ~~appointed official of a private nonprofit environmental protection~~  
25 ~~organization or as a member of a~~ be a member of a professional  
26 scientific association that represents one of the disciplines or  
27 professions described in those three paragraphs.

28 ~~(c) (1) For the term of the public member whose position~~  
29 ~~expires on January 15, 2002, the Governor shall appoint either one~~  
30 ~~of the public members described in paragraph (4) of subdivision~~  
31 ~~(a) or one of the scientific and conservation members described in~~  
32 ~~paragraph (6), (7), or (8) of subdivision (a).~~

33 ~~(2) For the term of the forest practices member whose position~~  
34 ~~expires on January 15, 2002, the Governor shall appoint the~~  
35 ~~representative of the fishing industry described in paragraph (5) of~~  
36 ~~subdivision (a).~~

37 ~~(3) For the term of the public member whose position expires~~  
38 ~~on January 15, 2003, the Governor shall appoint either one of the~~  
39 ~~public members described in paragraph (4) of subdivision (a) or~~

~~one of the scientific and conservation members described in paragraph (6), (7), or (8) of subdivision (a).~~

~~(4) For the term of the forest practices member whose position expires on January 15, 2003, the Governor shall appoint one of the industry representatives described in paragraph (1), (2), or (3) of subdivision (a).~~

~~(5) For the term of the public member whose position expires on January 15, 2004, the Governor shall appoint either one of the public members described in paragraph (4) of subdivision (a) or one of the scientific and conservation members described in paragraph (6), (7), or (8) of subdivision (a).~~

~~(6) For the term of the rangeland member whose position expires on January 15, 2004, the Governor shall appoint an industry representative described in paragraph (1), (2), or (3) of subdivision (a).~~

~~(7) For the term of the forest practices member whose position expires on January 15, 2005, the Governor shall appoint an industry representative described in paragraph (1), (2), or (3) of subdivision (a).~~

~~(8) For the term of the public member whose position expires on January 15, 2005, the Governor shall appoint either one of the public members described in paragraph (4) of subdivision (a) or one of the scientific and conservation members described in paragraph (6), (7), or (8) of subdivision (a).~~

~~(9) The Governor may appoint a public member described in paragraph (4) of subdivision (a) or a scientific and conservation member described in paragraph (6), (7), or (8) of subdivision (a) for the term of the vacant public position.~~

*(c) (1) For the term of the rangeland member whose position expires on January 15, 2004, the Governor shall appoint a rangeland owner or a timberland owner engaged in commercial forestry who may be a nonindustrial tree farmer, as defined in subdivision (b) of Section 4593.2.*

*(2) For the term of the public member whose position expires on January 15, 2004, the Governor shall appoint a registered professional forester who has training and experience in silvicultural sciences, forest ecology, forest management, or a closely related field.*

*(3) For the term of the public member whose term expires on January 15, 2005, the Governor shall appoint one of the scientific*

1 *and conservation members described in paragraph (7), (8), or (9)*  
2 *of subdivision (a).*

3 *(4) For the term of the industry representative whose position*  
4 *expires on January 15, 2005, the Governor shall appoint a member*  
5 *of a statewide environmental organization with experience in*  
6 *forestry policy.*

7 *(5) For the term of the industry representative whose position*  
8 *expires on January 15, 2006, the Governor shall appoint a*  
9 *representative of the sport or commercial fishing industry.*

10 *(6) For the term of the public member whose term expires on*  
11 *January 15, 2006, the Governor shall appoint one of the scientific*  
12 *and conservation members described in paragraph (7), (8), or (9)*  
13 *of subdivision (a).*

14 *(7) All other appointments made by the Governor to the board*  
15 *after January 1, 2004, shall be consistent with the criteria for*  
16 *membership of the board as established by this section.*

17 SEC. 2. Section 731 of the Public Resources Code is amended  
18 to read:

19 731. (a) In addition to possessing the individual  
20 qualifications specified in Section 730, all members of the board  
21 shall be appointed by the Governor and confirmed by the Senate  
22 on the basis of their educational and professional qualifications  
23 and their general knowledge of, interest in, and experience with,  
24 problems relating to watershed management (including hydrology  
25 and soil science), forest management practices, fish and wildlife,  
26 range management, forest economics, land use planning,  
27 environmental protection, or land acquisition. All members of the  
28 board shall represent the general public interest.

29 (b) No person appointed pursuant to paragraphs ~~(4), (5), (6),~~  
30 ~~(7), and (8) of subdivision (a) of Section 730 shall be a member of~~  
31 ~~(5), (7), (8), and (9) of subdivision (a) of Section 730 may be a~~  
32 ~~member of the board if that person has received any 20 percent or~~  
33 ~~more of his or her gross income in the one year before and one year~~  
34 ~~after appointment to the board, directly or indirectly, from a person~~  
35 ~~or entity subject to regulation by the board or eligible for~~  
36 ~~appointment to the board under paragraph (1), (2), or (3) of~~  
37 ~~subdivision (a) of Section 730.~~

38 (c) *The board shall maintain its headquarters in Sacramento*  
39 *and shall hold meetings at the times and places as it determines.*  
40 *Five members of the board shall constitute a quorum for the*

*purpose of transacting any business of the board. A majority affirmative vote of the total authorized membership of the board shall be necessary to take any action, including adopting, amending, or repealing rules and regulations of the board adopted pursuant to Article 4 (commencing with Section 4551) of Chapter 8 of Part 2 of Division 4. All meetings of the board shall be open to the public.*

SEC. 3. Section 731.1 of the Public Resources Code is repealed.

SEC. 4. Section 733 of the Public Resources Code is repealed.

~~SEC. 5. Section 735 of the Public Resources Code is repealed.~~

~~SEC. 6.—~~

SEC. 5. Section 736 of the Public Resources Code is repealed.

~~SEC. 7.—~~

SEC. 6. Section 737 of the Public Resources Code is amended to read:

737. (a) No board member ~~shall~~ *may* participate in any adjudicative action of the board or attempt to influence any adjudicative decision of the board that involves himself or herself, or any person with whom he or she is connected, as a director, officer, paid consultant, or full-time or part-time employee, or in which he or she has a financial interest within the meaning of Section 87103 of the Government Code.

(b) If a board member determines that he or she has a conflict of interest on a particular matter before the board pursuant to subdivision (a), he or she shall provide the clerk of the board with a brief written explanation of the basis for the conflict of interest, which shall become a part of the public record of the board. The written explanation shall be delivered prior to the time the matter to which it pertains is voted on by the board. This disclosure requirement is in addition to any other conflict-of-interest disclosure requirement imposed by law.

(c) Upon request of any person, or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section, alleging the facts upon which the allegation is based, and asking that the member be removed from office. Further proceedings shall be in accordance as nearly as practicable with rules governing civil actions. If after trial the court finds that the board member has



1 knowingly violated this section, it shall order the member removed  
2 from office.

3 (d) For purposes of this section, retirement or other benefits  
4 paid by a forestry entity to an individual who is no longer  
5 employed by that entity are not considered to be compensation, if  
6 those benefits were earned prior to the date the individual  
7 terminated his or her employment with the entity.

8 ~~SEC. 8.—~~

9 *SEC. 7.* Section 737.5 is added to the Public Resources Code,  
10 to read:

11 737.5. (a) For the purposes of this section, “ex parte  
12 communication” means any oral or written communication  
13 between a board member and an interested person about an  
14 adjudicative matter, within the board’s jurisdiction ~~including~~  
15 ~~permits, permit conditions, fees, penalties, mitigation, or~~  
16 ~~compliance with the Z’berg-Nejedly Forest Practice Act of 1973~~  
17 ~~(Chapter 8 (commencing with Section 4511) of Part 2 of Division~~  
18 ~~4) that does not occur in a public hearing, workshop, or other~~  
19 ~~official proceeding, or on the official record of the proceeding on~~  
20 ~~the matter.~~

21 (b) No board member or any other person, except a staff  
22 member of the board, department, or any other state agency, who  
23 is acting in his or her official capacity and who intends to influence  
24 the decision of the board on a matter within the board’s jurisdiction  
25 may make an ex parte communication, unless the board member  
26 or the person who engages in the communication with the board  
27 member discloses that communication in one of the following  
28 ways:

29 (1) The board member or the person fully discloses the  
30 communication and makes public the ex parte communication by  
31 providing a full report of the communication to the executive  
32 officer or, if the communication occurs within seven days of the  
33 next board hearing, to the board on the record of the proceeding  
34 of that hearing.

35 (2) When two or more board members receive substantially the  
36 same written communication or receive the same oral  
37 communication from the same party on the same matter, one of the  
38 board members fully discloses the communication on behalf of the  
39 other board member or members who received the communication



1 and requests in writing that it be included in the board's official  
2 record of the proceeding.

3 (c) (1) The board shall adopt standard disclosure forms for  
4 reporting ex parte communications, which shall include, but need  
5 not be limited to, all of the following information:

6 (A) The date, time, and location of the communication.

7 (B) The identity of the person or persons initiating and the  
8 person or persons receiving the communication.

9 (C) A complete description of the content of the  
10 communication, including the complete text of any written  
11 material that was part of the communication.

12 (2) The executive officer shall include in the public record any  
13 report of an ex parte communication.

14 (d) A communication ceases to be an ex parte communication  
15 when it is fully disclosed and included in the board's official  
16 record.

17 (e) In addition to any other applicable penalty, a board member  
18 who knowingly violates this section is subject to a civil penalty, not  
19 to exceed seven thousand five hundred dollars (\$7,500).  
20 Notwithstanding any law to the contrary, the court may award  
21 attorneys' fees and costs to the prevailing party.

22 (f) Notwithstanding Section 11425.10 of the Government  
23 Code, the ex parte communications provisions of the  
24 Administrative Procedure Act (Article 7 (commencing with  
25 Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title  
26 2 of the Government Code) do not apply to proceedings of the  
27 board under this code.

28 ~~SEC. 9.—~~

29 *SEC. 8.* Section 737.7 is added to the Public Resources Code,  
30 to read:

31 ~~737.7.—(a) Each member of the board shall receive one~~  
32 ~~hundred dollars (\$100) for each day during which the member is~~  
33 ~~engaged in the performance of official duties. The compensation~~  
34 ~~of each member, except the compensation of the chairperson, may~~  
35 ~~not, however, exceed in any one fiscal year, the sum of four~~  
36 ~~thousand dollars (\$4,000). The chairperson of the board may~~  
37 ~~receive compensation in an amount not to exceed five thousand~~  
38 ~~dollars (\$5,000) in any one fiscal year for the performance of~~  
39 ~~official duties. In addition to that compensation, each member~~

1 ~~shall be reimbursed for necessary traveling and other expenses~~  
2 ~~incurred in the performance of official duties.~~

3 ~~(b) The board shall maintain its headquarters in Sacramento~~  
4 ~~and shall hold meetings at the times and places as it determines.~~  
5 ~~Five members of the board shall constitute a quorum for the~~  
6 ~~purpose of transacting any business of the board. A majority~~  
7 ~~affirmative vote of the total authorized membership of the board~~  
8 ~~shall be necessary to take any action. All meetings of the board~~  
9 ~~shall be open to the public.~~

10 ~~(e)–~~

11 737.7. (a) The Governor shall designate the chairperson of  
12 the board from among the members of the board. The person  
13 designated as the chairperson shall hold that office at the pleasure  
14 of the Governor. The board shall annually elect a vice chairperson  
15 from among its members.

16 ~~(d)–~~

17 (b) The board may appoint an executive officer who shall be  
18 exempt from civil service pursuant to subdivision (e) of Section 4  
19 of Article VII of the California Constitution. The board may also  
20 employ clerical assistants as necessary for the proper discharge of  
21 its duties.

22 ~~SEC. 10.—~~

23 ~~SEC. 9.~~ Section 738 of the Public Resources Code is repealed.

24 ~~SEC. 11.—~~

25 ~~SEC. 10.~~ Section 739 of the Public Resources Code is  
26 repealed.

27 ~~SEC. 12.— Sections 895.1, 898, 898.2, 914.8, 916, 916.2,~~  
28 ~~916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9,~~  
29 ~~936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11,~~  
30 ~~956.12, 963.3, and 963.9 of Title 14 of the California Code of~~  
31 ~~Regulations, as those sections read on December 31, 2001, which~~  
32 ~~sections, or designated amendments to those sections, will expire~~  
33 ~~on December 31, 2001, shall remain effective and operative until~~  
34 ~~January 1, 2003. On that date, the sections, or the designated~~  
35 ~~amendments to those sections, as the case may be, are repealed.~~  
36 ~~From January 1, 2002, until January 1, 2003, the State Board of~~  
37 ~~Forestry and Fire Protection may not add to, amend, or repeal~~  
38 ~~those regulations, unless it is necessary in order to be consistent~~  
39 ~~with any statutory changes enacted by the Legislature during that~~  
40 ~~time period.~~

1     *SEC. 11. This act shall become operative on January 1, 2004.*

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